

Conservation Commission

Meeting Minutes

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

March 1, 2018

I. Call to order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on March 1, 2018. Chm. Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rules; which allow the applicant / representative five minutes to make a presentation to the Commission members, Commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. He asked for all to silence their cell phones.

Note: The meeting was being recorded anyone in the audience who was recording, or videotaping was asked to acknowledge such to the Commission. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

Members Present: Robert Gray, Rob Palumbo, Paul Szwed and Thomas Ligor.

Excused Members: Melvin P. Holmes, Susan Weston, Elise Leduc and Associate Member, Greg Berman.

Also Present: Sam Haines, Carol Mitchell, Jim Mulvey, Michael Clark, Mike Borselli, Joseph Agrillo, Jr., Fred Bartholomew, Mrs. Bowles, Mike Perra and Mr. Britto.

Chm. Gray announced the agenda would be taken out of order.

Request for Extension of Order of Conditions:

1) Anne Camille-Talley

File # SE7-1918

Representative: Bracken Engineering, Inc.

594 Circuit Ave., Pocasset

Raze existing house and replace with single family dwelling in a V Flood Zone and 100' of a Wetland Resource Area.

Chm. Gray explained work on this project hasn't begun and there's a request for an extension by Bracken Engineering. Normally, he would recuse himself because he performs work for Bracken Engineering; however, he invoked the rule of necessity because without him there'd be no quorum. He asked if anyone in the audience objected; there were no objections.

Brendan Mullaney explained that the applicant has had health issues both personally and with her immediate family over the past three years. The project has taken a substantial amount of time to receive permits and an easement from the town. Also, since the original filing, the economy has bounced back, and construction costs are significantly higher; therefore, the applicant would like to sell the property with the permit in hand, so the new owner can inherit the Order of Conditions and proceed with the project. He respectfully requested a three-year extension; but will gladly accept a one or two-year extension.

Board Comment – None.

Agent Comment – Mr. Haines stated the project is within a Coastal Bank, cantilevered over a marsh. Based on the minutes from the previous report, this wasn't a contentious filing. He stated since no work has been performed on the property to date, that would be a valid reason to deny an extension. He advised if any member would like to review the original filing, this would be the time to do it.

Board Comment – Chm. Gray asked for the expiration date. Mr. Haines stated it's March 24th.

Mr. Haines stated he doesn't feel a 3-year extension is out of line.

Public Comment – None.

Chm. Gray entertained a motion to grant the request for an extension. **Mr. Ligor moved, Mr. Szwed seconded to grant the extension.** With no discussion, the motion carried. 4-0-0.

Chm. Gray announced at the request of the department, the public hearing for the Town of Bourne Department of Natural Resources for Little Buttermilk Bay to restore and establish a permanent population of eastern oysters on sub-tidal sea floor has been continued to March 15, 2018.

Also, at the request of the representative, Wings Neck Trust located at 99 South Road (Parcel 75), Pocasset, has been continued to March 15, 2018 and at the request of the applicant, Patti and Kevin O'Keefe located at 130 Wings Neck Road, Pocasset, has been continued to May 3rd.

Request for Determination of Applicability:

- 1) Anne K. Ford
File # CC18-05
Representative: Same
221 Shore Rd., Monument Beach

To perform seasonal mowing, landscaping and patio replacement within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Plot Plan and DEP Wetlands Change Mapping.

(Continued from 2/15/18)

At the request of the applicant, this filing will be continued to March 15, 2018.

Notice of Intent:

- 1) The Nature Conservancy and the Town of Bourne Natural Resource Department
File # SE7-2001
Representative: Same
Little Buttermilk Bay, Buzzards Bay

To restore and establish a permanent population of eastern oysters on sub-tidal sea floor.

(Continued to March 15, 2018)

2) Tahanto Associates, Inc.

File # SE7-1999

Representative: Design Consultants, Inc.

0 Tahanto Road, Pocasset

To demolish an existing 30' wooden pedestrian bridge and replace it with a 35' aluminum pedestrian bridge within a V Flood Zone and within a Wetland Resource Area.

Materials Reviewed – Site Photographs, Revised Site Plan of Record, copy of Chapter 91 License, updated Construction Methodology, stamped Structural Civil Engineering Plans and DEP Wetlands Change Mapping.

(continued from February 1, 2018)

Chm. Gray stated the matter was continued so the agent and several members of the Commission could perform a site visit. The plans have been revised accordingly.

Michael Clark addressed the members. He explained the proposed project will replace the bridge in-kind in accordance with the existing Chapter 91 License. He discussed the layout of the property and described the existing structure. The proposed new structure will be installed in the existing footprint at the same surface elevations on site. He is proposing to remove the existing concrete pads and replace them with wooden stairs. Mr. Clark then described the construction sequencing in detail, stating all work will be performed from the upland side, all materials will be stockpiled in the right of way and all debris will be removed daily.

Board Comment – Chm. Gray asked for more detail on how the piles will be driven. Mr. Clark explained a compressed air hose will be brought on site and they will attempt to jackhammer them in.

Chm. Gray asked where the crane that's being used for the delivery of the bridge will be placed. Mr. Clark referred to a site photograph to pinpoint the location for the crane. Chm. Gray asked that he pinpoint the location on the site plan. Mr. Clark pinpointed the location on the site plan. Chm. Gray noted the reach is long and asked what if the crane must be moved seaward. Mr. Clark stated if that's the case, he would propose mats be used. He stated they will not bring the crane in until the bridge is ready to be delivered and the site has been prepared. Chm. Gray stressed the importance of placing mats under the stabilizer. Mr. Clark agreed.

Mr. Palumbo asked the distance. Mr. Clark stated it's approximately 40 feet.

Chm. Gray asked if a crane company has been selected yet. Mr. Clark stated one has not been selected yet; explaining the first phase was to come before Conservation, then he will seek a minor license revision. Chm. Gray suggested having a pre-construction meeting on site with the agent and the crane operator. Mr. Clark agreed.

Mr. Ligor questioned how the crane will gain access to the site. Mr. Clark explained it will be brought on the roadway. They will make sure it is free of vehicles and will move slowly.

Chm. Gray questioned whether the overhead wires have been checked. Mr. Clark stated that will be the responsibility of the contractor.

Mr. Haines stated 183 Tahanto Road must provide an access agreement; which was requested at the last meeting. Mr. Clark stated this matter will have to be continued and the access agreement will be presented at the next meeting.

Agent Comment – Mr. Haines stated regarding the plan, the Commission requested that a saltmarsh delineation be performed. The revised plan does not show flags nor has a report been received; however, the revised plan appears to be more accurate than the previously submitted plan. He spoke with the representative about this who stated they just surveyed the edge of the Spartina grass. Mr. Haines stated for this project, he feels this plan is sufficient based on his site review; however, if the Commission is uncomfortable with accepting a plan with the current survey, they can stamp the plan and condition any order with language that states; action taken at this time does not indicate acceptance of Wetland Resource Area boundaries by the Conservation Commission. The Commission has received an updated construction methodology which removes the need for a staging area on the Barrier Beach. It now appears that the pilings will be temporarily placed at the extension of the pier. Mr. Haines stated he has not received a response from the Division of Marine Fisheries and he could not locate a green card from DMF. The proposed work is not within the 2017 mapped habitat for rare species. Stamped Structural Civil Engineering plans have been received, which show a reduction in pilings. Another issue is the sand walkway, an approximately 2' wide path within the saltmarsh. This pathway was shown in a previously approved filing, SE7-1150. It does not appear to have changed since that filing in 1995 and there are no changes being proposed to the pathway on the revised plan. The bridge and pathway are clearly tied together. The proposed plan shows ropes and signage along the way to keep people within the pathway, so it doesn't expand. The only difference that

he could see between the Chapter 91 License and what's proposed, other than the reduction in the number of pilings, is the wooden stairs. This plan proposes to remove existing concrete pads, which are licensed, and replace them with wooden stairs. Mr. Haines doesn't see a problem with that.

Chm. Gray asked if the risers will be open. Mr. Clark stated they will be open. Mr. Haines suggested adding that as a condition since the proposal does not state that specifically. Mr. Clark stated once they speak with a fabricator, the Commission will receive another set of drawings.

Mr. Haines suggested adding another condition to require an access agreement from 183 Tahanto.

Mrs. Bowles, the owner of 183 Tahanto, was present and stated she will work with the representative to draft the access agreement.

Chm. Gray opened a discussion with respect to keeping the sand path vs. installing an elevated walkway. Mr. Haines stated he looked at historical photos and the pathway has been there for a very long time. He suggested conditioning the Order to prevent any additional fill from being added to the pathway. Mr. Haines stated at some point, an elevated walkway will have to be considered. Chm. Gray asked for the downside of having to install an elevated walkway at this time. Mr. Clark stated cost and impact to Mrs. Wolf's property. Also, the bridge would have to be elevated. The Commission agreed that the sand path could remain at this time.

Chm. Gray stated both the plan and the license list a concrete boat ramp. He questioned whether the ramp is functional. Mr. Clark stated the boat ramp is not functional and the bottom of the ramp is now covered with saltmarsh; it hasn't been used in years. Chm. Gray asked the agent if he examined the boat ramp during his site visit and how difficult would it be to remove the concrete. After a brief discussion, it was decided that the boat ramp would stay in place since part of it has been taken over by the saltmarsh.

Public Comment – Abutter, Francesca Rooney, questioned the need for an elevated walkway in the future. Mr. Haines explained that as sea levels rise, at some point the existing sand pathway will be under water and an elevated walkway will have to be considered. Chm. Gray explained all that's currently being proposed is replacing the bridge. It had been proposed at a previous meeting to add additional sand to the existing walkway; but that is not permissible.

Mr. Mulvey stated he has no affiliation with Tahanto and questioned whether the project has received approval from the association. Chm. Gray explained it's the association who filed the application. Mr. Mulvey asked if the bridge will be permanent or seasonal. Chm. Gray stated it will be permanent. Mr. Mulvey asked what type of pilings are being proposed. Mr. Clark stated Steel-H piles are being proposed; which will be driven. Mr. Mulvey proposed using helical piles instead of steel and questioned the number of pilings being proposed. Mr. Clark stated there were ten original pilings and four are being proposed. He stated they don't have access to bring a helical rig to the site, which is why the steel pilings are being proposed. Mr. Mulvey asked how the pilings will be driven. Mr. Clark explained the first approach will be to drive the pilings with a jackhammer. If that doesn't work, they will use a vibratory attachment on the crane. Mr. Mulvey asked for the start and completion dates for the project. Mr. Clark stated the project dates have not been finalized.

Mr. Clark asked that a standard set of conditions be sent to him to be sure he captures all of them. Mr. Haines will forward them to the representative.

With no further discussion, the matter was continued to March 15, 2018.

3) Alice Handy

File # SE7-2002

Representative: Falmouth Engineering, Inc.

284 Circuit Ave, Pocasset

To demolish existing the dwelling and to construct a new dwelling within an AE Flood Zone and within 100 feet of a Wetland Resource Area.

(Continued from February 1, 2018)

Materials Reviewed – Site Photographs, revised Site Plan of Record with cover letter, revised L Management Plan, revised Landscape Plan, letter from Alice Handy, BVW Data Sheets, Landscape Plan and DEP Wetlands Change Mapping.

Michael Borselli along with the architect, Cheryl Perrault, addressed the members. He questioned whether the four Commission members in attendance made up the quorum. Mr. Haines stated yes. Mr. Borselli stated he will be requesting a continuance to March 15, 2018 but would like to bring the Commission up to speed. He submitted a revised site plan with a cover letter on February 22, 2018. He also submitted a revised Land Management Plan, a revised Landscape Plan, a letter prepared by Alice Handy regarding the historical development of the land by her family and detailed photos depicting the top

of the Coastal Bank. He stated the plans were revised on sheet 1 to incorporate some transects down the Bank. The transects were utilized in addition to specific site observation to show where the top of the Coastal Bank was adjusted to. It shifted slightly landward after further analysis This is highlighted in magic marker on the photos. He explained that the reason he submitted the letter from Alice Handy is because during conversations with her, he learned that her family history on this land is such that the landform in question, although it meets the definition of a Coastal Bank, was a historically placed mound of fill that was created in the late 60s or early 70s, prior to the Wetlands Protection Act. He was surprised to learn from the letter that the Handy family has owned the land since the mid- late 1600s.

The top of the Coastal Bank has been revised on the plan. It just touches the edge of the proposed wrap around porch and it runs just landward of where they were hoping to place a landscape retaining wall. All the proposed work is not within a vegetated area. It's adjacent to but not within the native vegetative buffer. This area is overrun with invasive species. The submitted Land Management Plan proposes to manage that and improve the health of the Bank by removing a lot of the invasive plant material.

He stated it's obvious the house is bigger but it's being pulled away from the top of the Bank, so he believes the project can be approved by the Commission. He explained the manmade Coastal Bank was created to provide storm damage prevention and flood control because it's a vertical buffer to flood waters. The proposed project will not change the ability of that landform's function to provide storm damage prevention and flood control. A response from The Natural Heritage & Endangered Species Program hasn't been received yet; but in his opinion, there's limited available wildlife habitat on this sloping landform.

A brief discussion transpired regarding Diamondback terrapin and the Eastern box turtle habitat. Chm. Gray thinks The Natural Heritage & Endangered Species Program may suggest prior to any construction activity, the lot be swept by a qualified biologist.

In closing, Mr. Borselli reminded the Commission of the improvements that will be brought on by the proposed project.

Board Comment – Chm. Gray asked Mr. Borselli to pinpoint where the existing cesspool is located. Mr. Borselli referred to the plan to pinpoint the existing cesspool's location. A brief discussion regarding the existing system transpired.

Mr. Ligor voiced concern over the project's ability to meet the 50-foot setback and questioned where the buffer zone will be located. Chm. Gray referred to the site plan and offered an explanation. Mr. Borselli stated this is a developed lot which predates the requirement for the 50-foot setback. A brief discussion transpired regarding current zoning restrictions.

Agent Comment – Mr. Haines stated the new plan shows the revised Coastal Bank delineation. Based on his field observations, this is much more accurate than the previous plan. Transects have been added to the new plan. The Commission has received an updated Land Management narrative and plan which controls the invasive species through herbicide and replants with native species. Despite the revision of the Bank, the house footprint has not changed, it is the same footprint as previously proposed. He encouraged the Commission to stay focused on impacts to the Resource Area rather than the size of the proposed structure. In this case, the Coastal Bank is not eroding, but is significant to flood control and storm damage prevention. The Commission will have to determine whether the proposed work reduces the Bank's ability to perform these functions or if the work will adversely impact the saltmarsh. Mr. Haines noted the representative previously stated the homeowner is willing to keep the driveway pervious. Mr. Haines will condition the use of herbicide should the Commission issue an Order of Conditions. A response from The Natural Heritage & Endangered Species Program has not been received so the matter will have to be continued.

Chm. Gray asked the representative if the plan has been taken to the Board of Health. Mr. Borselli stated no but prior to filing this application, he met with the health agent to discuss procedures. She requested that he first apply with the Conservation Commission.

Chm. Gray asked Ms. Perrault if in her opinion architecturally, due to the size of the proposed structure, that makes the proposed house incompatible with any aspects of their zoning regulations. Mr. Borselli stated they believe they meet the lot coverage requirements. Ms. Perrault agreed. Mr. Haines stated he spoke with the town planner to discuss concerns Ms. Weston voiced at the previous meeting regarding upland to wetland ratio. The town planner informed him that applies to new lots and new subdivisions only, not to this project. Chm. Gray stated the Conservation Commission has no regulation relative to the size of a house and neither does DEP. The septic system is also out of the Commission's purview. He stated if the Board of Health doesn't require changes to the plan, it won't need to come back before the Commission; however, if a change to the plan is required, he advised the representative to submit the revision to the agent for review, the agent will determine whether it needs further review by the Commission or if it can be approved administratively.

Chm. Gray feels the restoration planting plan will enhance the buffer. He suggested the representative and property owner contact the Cape Cod Mosquito Control to see if they will address the issue of the clogged ditches. He explained that they have full immunity under the Wetlands Protection Act to open the ditches without having to file. Mr. Borselli stated he will try to go that route.

Mr. Palumbo expressed his appreciation that the representative is moving the proposed structure away from the Coastal Bank. Stating historically, the Commission also appreciates when an applicant takes measures to reduce adverse impacts to a Resource Area.

Mr. Szwed thinks the restoration plan addresses some of the concerns raised at the previous meeting.

Public Comment – None.

The matter will be continued to March 15, 2018

4) Wings Neck Trust

File # SE7-2000

Representative: Falmouth Engineering, Inc.

99 South Road, (Parcel 75), Pocasset

To repair an existing steel bulkhead and to shift an existing swim float seaward within a V Zone and within a Wetland Resource Area.

(Continued from February 1, 2018)

At the request of the applicant, this filing will be continued to March 15, 2018.

5) Patti and Kevin O’Keefe

File # SE7-1993

Representative: MM Environmental

130 Wings Neck Road, Pocasset

Reconstruct and enlarge a deck; permit an existing dog enclosure fence; remove a paver walkway and replace with elevated saltmarsh boardwalk and invasive species management within a V Flood Zone and a Wetland Resource Area.

(Continued from December 21, 2017)

At the request of the applicant, this filing will be continued to May 3, 2018.

Other Business:

- 91 Old Dam Road & 23 Back River Road: Tree clearing on a Coastal Bank adjacent to cranberry bogs. – Mr. Haines explained Mr. Agrillo performed some tree clearing adjacent to the cranberry bogs to expand the road width. Ordinarily, this could be handled under the agricultural exemption; however, there was clearing done on a property that appears to be not owned by the bog system. He stated the Commission needs to decide whether agricultural exemptions apply for clearing not performed on the subject property. Because there are multiple parties involved, the property owner, Buster Britto whose trees were cleared, will have to agree to any proposed mitigation.

Mr. Haines submitted plans of the property and site photographs for the members to review. He stated the property line runs down the center of the roadway.

Mr. Agrillo described the area where the clearing took place.

Chm. Gray explained the land in agricultural use cannot extend beyond the property of the person who is running the agricultural entity. He stated it is possible for work to be performed on an adjacent property and still meet the maintenance condition of the agricultural regulations; however, it would require permission from the abutting landowner.

Mr. Agrillo explained that he met with the property owner after the cutting occurred to apologize and would like to rectify the situation by any means necessary. He stated in fairness to him, when he looked at the property on the map, the access road to the bog according to that map is a shared lot line. It's been used since the inception of the bog as the access road on the bog. The area that was cleared has dig marks and prior dig marks by the prior owner, Pete Baptiste. Mr. Agrillo pointed out irrigation pipes on a site photograph stating the prior owner worked right up to the back of the pipes and along that line. He stated he did not clear more than anything necessary for the operation of the cranberry bog. Mr. Agrillo explained similar clearing has been done previously. He referred to a Google Earth photo which shows trees hanging over the roadway stating this was a complaint in the past from the truck drivers loading berries. He stated the vegetation has become overgrown because it's been let go for a while, explaining what was cut wasn't an attempt to make anything any bigger or a land grab, it was strictly maintenance pruning of the bog. There was no soil disruption and the smaller vegetation root layer remains.

Mr. Haines stated this is a Coastal Bank. Chm. Gray stated he is aware of that based on a previous filing.

Chm. Gray asked Mr. Britto how he'd like the situation rectified. Mr. Britto stated approximately 30 Oak trees were cut. Chm. Gray asked if he wants Mr. Agrillo to replant or see if nature will take its course and revegetate on its own. He also asked if he'd like to demarcate the property line to prevent this from happening again. Mr. Britto stated he would like Mr. Agrillo to replant but questioned whether that will disturb the Bank. Chm. Gray explained that planting will require holes to be dug for the root balls which will disturb the Bank.

Chm. Gray asked the agent for his input. Mr. Haines stated it will grow back. There are some unvegetated areas that are sandy slopes and there are wood chips there. He stated Mr. Agrillo can spread some loam and plant vegetation in those areas. Mr. Haines stated if it were him, he wouldn't want the area restored with trees that will hang over. He suggested planting native shrubs instead; which he thinks would be better for the Wetland Resource Area and the Coastal Bank. Mr. Haines discussed the benefits to planting shrubs but will leave it up to the property owner to decide what course of action he'd like to take.

Abutter, Mike Perra, stated he is familiar with the road and feels the road was usable as it was. He thinks the cutting was excessive. Chm. Gray asked if any cutting occurred on his property as well. Mr. Perra indicated there was not.

Chm. Gray suggested holding off on shrub replanting until the middle of September. This will allow the shrub layer to regrow over the spring and summer; then shrubs can be planted in the fall if necessary. Chm. Gray discussed his reluctance with replanting immediately. After a brief discussion, all parties involved agreed to revisit the matter in the fall and replant as necessary. Mr. Britto is willing to meet Mr. Agrillo and Mr. Haines at the end of the growing season to determine the next course of action.

A brief discussion regarding Coastal Banks transpired.

Mr. Mulvey opened a brief discussion regarding the possibility of erosion or runoff. Mr. Haines doesn't foresee that being a problem in this area.

- Reissuance of Order of Conditions for SE7-1998 for 11 Little Bay Lane – Mr. Haines stated the Order issued at the previous meeting was lacking signatures.

- Vote excused absent members, if necessary – **Mr. Palumbo moved, Mr. Ligor seconded to excuse the absent members.** With no discussion, the motion carried. 4-0-0.

- Acceptance of Previous Meeting Minutes – None.

- Report of the Conservation Agent – Mr. Haines stated he responded to a large diesel spill at Hamilton Tree in Pocasset on Wednesday. Somewhere between 100-290 gallons of diesel released within the buffer to a jurisdictional wetland, all on the parking lot. The police are investigating the incident which appears to be vandalism. It does not appear that the wetland was impacted, there was no sheen on the water and there are no outfalls into the Resource Area. A vac truck was on site assisting with the cleanup. This is being handled administratively by the agent; however, should the contaminated soil reach the naturalized buffer, then an emergency certification will be required. He will revisit the site during the next rain event. Chm. Gray questioned whether a 50-foot buffer is in place. Mr. Haines indicated there is a naturalized buffer in place. A discussion ensued.

Mr. Haines opened a brief discussion regarding recent storm damage in the Highlands.

Chm. Gray asked when the Town stair project will begin. Mr. Haines stated it has gone through the bidding process and is ready to go. To his knowledge, work hadn't started yet, but he will visit the site to confirm.

Mr. Haines stated Cape Cod Mosquito Control is working in the Sagamore Marsh next week.

- Public Comment Period on Non-Agenda Items – Mr. Mulvey discussed an article regarding the diesel spill cleanup that was in the Cape Cod Times. Additionally, he opened a brief discussion regarding the house located at 2 Indian Trail and several other adjacent properties.

- Questions and Answers re: M.G.L. Chapter 131 §40 and 310 CMR 10.00-10.99 – None.

- Questions and Answers re: Town of Bourne Wetland Protection Bylaw (Article 3.7) and BWR 1.00-1.16 – None.

II. Adjournment

Mr. Ligor moved, Mr. Szwed seconded to adjourn. With no discussion, the motion carried. 4-0-0. The meeting adjourned at 8:42 PM.

Minutes submitted by: Carol Mitchell